



# Memorandum

U. S. Department  
of Transportation  
**Pipeline and  
Hazardous Materials  
Safety Administration**

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Subject: Response to OIG Discussion Draft Management Advisory

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To: Ann Calvaresi Barr  
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PHMSA has taken immediate action to assure that the explosives classification approvals program is operating as fully intended under the Hazardous Materials Regulations (HMR). The Office of Inspector General's draft Management Advisory (MA) on explosives classification approvals focuses on two areas: (1) the process for reviewing and authorizing explosives classification approvals; and (2) oversight of approved explosives testing agencies. PHMSA has substantive efforts in place that address each of these areas.

PHMSA has been working to improve its processes in these areas since August 2009, by producing action plans to address first the special permits process then the approvals process (December 2009). A key element of these action plans was to complete updated standard procedures for each area. Early this January, PHMSA published Standard Operating Procedures (SOP) for the Evaluation and Issuance of Explosive Classification Approvals. These SOPs include the process for reviewing and authorizing explosive classification approvals.

The Approvals Action Plan also includes elements to improve oversight of approved explosives testing agencies by identifying specific requirements for the inspection, management and oversight of Third Party Certification Agencies. Those requirements were established in early March. Shortly thereafter, PHMSA created a strike force to audit all of PHMSA's testing agencies, and will complete audits on all four of these agencies by the end of this week.

### **PHMSA Established a Comprehensive Process for Classifying and Approving Explosives**

PHMSA is addressing the key explosives classification approvals issues identified in the OIG MA by: (1) establishing uniform, formalized guidance for classifying and approving explosives; (2) establishing a process to better ensure adherence to regulatory requirements for reclassifying explosives; and (3) strengthening formal processes and controls to address internally contested safety decisions and conflicts of interest during investigations.

We recognize that PHMSA historically lacked uniform, formalized guidance for classifying and approving explosive classification approvals. As indicated above, PHMSA published Standard Operating Procedures (SOPs) for the Evaluation and Issuance of Explosive Classification Approvals on January 8, 2010. The SOPs convey the responsibilities of the testing agency and PHMSA with respect to operational roles, technical processes, documentation and reporting criteria to ensure greater accountability. PHMSA will update those procedures as needed as we continuously improve our processes.

PHMSA has also instituted a process to better ensure management appropriately addresses issues such as the one that arose in a 2008 OIG hotline complaint. We agree with the OIG that the complaint was not appropriately addressed by management at that time. The OIG hotline complaint involved a difference of professional judgment concerning the appropriate classification of a specific product. Current management has addressed the complaint and has instituted a process to determine the appropriate classification of that product. PHMSA recently engaged an independent testing agency to test the product. The test results will be used to determine if reclassification is necessary.

As a result of the initial handling of the hotline complaint, the draft MA recommends establishing a formal process and controls for appropriately resolving internally contested safety decisions. PHMSA agrees with this measure and has taken action to implement it. Specifically, PHMSA developed a Safety Review Board to resolve internally contested safety decisions. We also established a PHMSA online suggestion box, including an option to anonymously lodge a complaint.

### **PHMSA Implemented New Guidelines for Oversight of Authorized Testing Agencies**

PHMSA's new guidelines to strengthen oversight of authorized explosives testing agencies address the issues identified in the OIG MA. PHMSA also established a testing agency audit team and developed new detailed inspection protocol. The team inspected and audited each PHMSA-authorized testing agency. That team has physically inspected three testing agencies over the past three weeks, and will complete the final audit this week. The results of the audits will be used to determine whether a testing agency is in compliance with PHMSA's requirements and whether it may continue to serve as a PHMSA-authorized testing agency.

While PHMSA benefits from the OIG's careful review of explosives testing agencies, and is taking action to address many of the issues identified, there are some points requiring clarification. First, PHMSA has not delegated its approval authority. Testing agencies are only granted authorization to examine and make a recommendation. The authority to issue an explosive classification approval rests solely with PHMSA. 49 CFR 173.56(b)(1). Further, PHMSA has not authorized any of the approved testing agencies to subcontract examination responsibilities. However, agencies may lease or contract facilities and personnel support from other entities so long as the facilities and personnel are controlled and supervised by officials of the

testing agencies that remain responsible for ensuring that the examinations and testing are performed correctly and for recommending the appropriate shipping description, division, and compatibility group for new explosives. PHMSA is also aware that all four testing agencies conduct testing and examinations at the applicant's company site because an explosives manufacturer's site may be a more appropriate and safer location for testing large explosives because it has specific equipment, handling capabilities, sufficient space, storage and necessary governmental permits.

Finally, we note that PHMSA has obtained all the required annual reports from the agencies for 2009. Once the testing agency audits are completed, PHMSA will issue new certification procedures that will enhance independent tests conducted by the certified testing agencies and will institute frequent audits to ensure compliance with the new certification procedures.

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In conclusion, we want to reemphasize that PHMSA has taken and is continuing to take immediate, aggressive, and comprehensive action to address all the concerns raised in the OIG Management Advisory Memorandum on Explosives Testing and Approvals and the previous OIG Report on Special Permits and Approvals. Actions have been completed or are underway to address each and every issue raised in this and the previous report through the action items set forth in the Approvals Action Plan. We remain committed to address, refine and improve the development and implementation of the plan to strengthen an already strong safety record.